IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2159 of 1998
With
SPECIAL CIVIL APPLICATION No. 23853 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVESHVAR CRUSHING INDUSTRIES - Petitioner(s)

Versus

DEPUTY ENGINEER (O & M) - Respondent(s)

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Appearance :
MR KETAN D SHAH for Petitioner(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/02/2006

ORAL JUDGMENT

1. As both the petitions are filed by the common petitioner and both are inter-connected, the same are being disposed of by this common judgement and order.

2. So far as Special Civil Application No.2159 of 1998 is concerned, the petitioner has challenged the legality and validity of the supplementary bill dtd.4/1/1998 in dismissing the appeal and confirming the aforesaid supplementary bill.

3. So far as Special Civil Application No.23853 of 2005 is concerned, the petitioner has prayed for appropriate writ, order and/or

direction to quash and set aside the letter dtd.6/12/2005 issued by the respondent to the petitioner informing the petitioner that unless the petitioner pays the entire supplementary bill, which is subject matter of Special Civil Application No.2159 of 1998, electricity connection of the petitioner will not be converted into LTP-3 and load will not be enhanced.

4. The petitioner is the consumer of the respondent Company having industrial connection bearing Consumer No.38301/00006/6. It is the contention on behalf of the petitioner that the petitioner was having electricity connection for the purpose of crushing stones. It appears from the record that on 18/12/1996 the officers of the respondent Company inspected the factory of the petitioner and a small hole in the body of the Meter was detected and considering the case as

case of theft of power, a supplementary bill for an amount of Rs.2,15,009=00 was served upon the petitioner. On payment of 30% of the supplementary bill i.e. Rs.64,503=00, the petitioner preferred an appeal before the Appellate Committee of the respondent Board. However, the Appellate Committee dismissed the appeal preferred by the petitioner after hearing the matter on 13/1/1998. Being aggrieved by and dissatisfied with the said decision of the Appellate Committee dtd.13/1/1998, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5. Mr.Ketan Shah, learned advocate appearing on behalf of the petitioner has submitted that the respondent has issued the supplementary bill considering the fact that the petitioner was running its factory for 24 hours and as such at the time of checking, a hole was detected and in

fact, the petitioner was running its factory only for 8 hours per day and crushing industry is not working continuously. However, this aspect has not been considered by the Appellate Authority of the respondent Board. It is also further submitted by Mr.Shah that the respondent has issued the supplementary bill for 171 days, though once in a week electricity was not being supplied and on every Saturday the petitioner unit remained closed and the supplementary bill is issued for 171 days without giving benefit / credit of staggering days and public holidays.

6. While admitting Special Civil Application No.2159 of 1998, this Court (Coram ; M.S. Shah,J.) granted ad-interim relief in favour of the petitioner on condition to deposit 25% amount of the supplementary bill of Rs.2,15,009=00, over and above 30% amount deposited earlier, and the respondent Board was directed to restore the

electricity supply t the petitioner. It appears that the said amount was deposited by the petitioner.

7. It appears that during the pendency of the said petition, the petitioner wanted to have more load and was required to convert the electricity connection into LTP-3 and therefore, the petitioner submitted an application before the respondent Board on 6/12/2005. However, the petitioner was informed that unless the petitioner pays the aforesaid amount of the supplementary bill with delay payment charges, their application will not be considered. Therefore, the petitioner has preferred Special Civil Application NO.23853 of 2005 to quash and set aside the said communication.

8. So far as Special Civil Application No.2159 of 1998 is concerned, I have heard the

learned advocates appearing on behalf of the parties as well as gone through the order passed by the Appellate Committee. The Appellate Committee on going through the Checkingsheet as well as laboratory report has found that there was a hole at the bottom of the Meter and there were scratches in the Meter, the colour has been disturbed and that hole seems to have been done with the aid of Drill-A, a thin wire can be inserted from the hole in the Meter and disk of the Meter could be stopped.

9. The Appellate Committee has also recorded a finding that the hole has been made and on going through the pattern of the consumption of the power by the consumer i.e. the petitioner herein and the pattern of the consumption at each replacement of the Meter, it is found that there is rise in the consumption of electricity energy and therefore, the Appellate

Authority has confirmed the supplementary bill. The finding recorded by the Appellate Committee is based upon the appreciation of evidence and this Court is not sitting in appeal, as an appellate authority while exercising the powers under sec.226 of the Constitution of India and therefore, the findings recorded by the Appellate Authority on the basis of the appreciation of the evidence are not required to be interfered with in exercise the powers under Article 226 of the Constitution of India. . However, the contention on behalf of the petitioner that the Appellate Committee has not given credit of staggering days / public holidays, though the Appellate Committee in other cases had given such credit, is concerned, for deciding the same, evidence is required to be adduced and to that extent the matter is required to be remanded to the respondent Company.

10. So far as the application submitted by the petitioner for enhancement of the load and to convert the electricity connection to LTP-3 Connection is concerned, on deposit of entire amount due and payable by the petitioner to the respondent Company towards the supplementary bill, except the staggering days and public holidays and subject to the decision that may be taken by the respondent Company on remand and subject to complying with with all other requirements, payment and all charges, the respondent Company is hereby directed to consider the application submitted by the petitioner for LTP-3.

11. For the reasons stated hereinabove, Special Civil Application No.2159 of 1998 is partly allowed to the extent of considering the question of grant of credit of staggering days as well as public holidays and the matter is

remanded to the respondent Company with a direction to consider the same on the basis of the contentions and submissions that may be made on behalf of the petitioner and on the basis of the evidence that may be lead on behalf of the petitioner with regard to the staggering days and public holidays, keeping in mind the other orders of the Appellate Committee, in accordance with law and on merits, as expeditiously as possible, preferably within a period of THREE MONTHS from the date of receipt of writ of this order. Thus, the matter is remanded for limited purpose for considering the question of granting credit of staggering days and public holidays only and the rest of the judgement and order of the Appellate Committee is hereby confirmed. Rule is made absolute to the aforesaid extent only with no order as to costs.

12. So far as Special Civil Application

No.23853 of 2005 is concerned, on payment of the entire amount of supplementary bill by the petitioner excluding of staggering days and public holidays and subject to the decision that may be take by the respondent Company on remand as aforesaid with regard to the staggering days and public holidays and complying with all other requirements and payment of all other charges, respondents are hereby directed to consider the application of the petitioner for enhancement of the load and for converting the electricity connection of the petitioner to LTP-3, in accordance with law and on merits as expeditiously as possible. With these observation and directions Special Civil Application No. 23853 of 2005 stands disposed of.

(M.R.SHAH,J.)

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